M/S. NANDRAM HUNATRAM, CALCUTTA

v.

UNION OF INDIA & ANR.

March 29, 1966

[M. HIDAYATULLAH, J. R. MUDHOLKAR, R. S. BACHAWAT AND J. M. SHELAT, JJ.]

Mines and Minerals—Failure to fulfil condition of lease and endangering colliery—Government if can determine lease—Revision—Procedure for passing order—Mineral Concession Rules, 1960.

The appellant-firm held mining lease of a colliery on the condition to continue the work, without voluntary intermission, in a skilful and workman-like manner. The partners fell out amongst themselves, the work of the colliery stopped, wages of the labourers were not paid, the essential services stopped working, and the colliery began to get flooded. The State Government stepped in and made a promise to the essential workmen that their wages would be paid and this saved the colliery. The State Government gave a notice asking the firm to remedy the defect within sixty days failing which it would take over the colliery. As the firm did nothing to remove the defects and did not request for extension of time, the State Government took over the colliery and terminated the lease. The firm filed a revision before the Central Government. The Central Government asked for the comments of the State Government and invited the firm to make its own comment upon the reply of the State Government. Taking the entire matter into consideration, the Central Government rejected the revision. In appeal to this Court, the firm contended that the action by the State Government was arbitrary and highhanded and that the Central Government did not give a hearing to the firm and also did not give any reasons in its order dismissing the revision.

HELD: The action of the State Government far from being arbitrary or capricious was not only right but proper. This was hardly a case in which any action other than rejecting the application for revision was called for and a detailed order was really not required because after all the Central Government was merely approving the action taken in the case by the State Government, which stood completely vindicated. [108 B-C]

The Mineral Concession Rules make it incumbent on the Central Government to obtain the comments of the State Government upon the application for revision and cast a duty on the Central Government to afford an opportunity to the applicant to make representations in respect of the comments of the State Government. This procedure was correctly followed and the Central Government thus had a detailed discussion of the pros and cons of the case before it. [107 G].

Harinagar Sugar Mills Ltd. v. *Shyam Sundar Jhunjhunwala*, [1962] 2 S.C.R. 339, *Madhya Pradesh Industries Ltd.* v. *Union of India*, [1966] J.S.C.R. 466 and *Aluminium Corporation of India Ltd.* v. *Union of India and Ors.*, C.A. No. 635/64, dated 22-9-1965] referred to.

A The firm did not fulfil its obligations under the lease and, whatever the reason, it was guilty of voluntary intermission in the working of the colliery and of endangering it by neglect. This entitled the State Government to step in and determine the lease under the terms of the lease and the provisions of the Mineral Concession Rules. [107 C-D].

B CIVIL APPELLATE JURISDICTION: Civil Appeal No. 257 of 1964.

Appeal by special leave from the judgment and order dated February 19, 1963 of the Government of India, Ministry of Mines and Fuel, New Delhi on an application for review under rule 54 of the Mineral Concession Rules 1960.

C *S. N. Andley, Rameshwar Nath, P. L. Vohra* and *Mahinder Narain,* for the appellant.

C. K. Daphtary, Attorney-General, R. Ganapathy Iyer and *B. R. G. K. Achar,* for respondent No. 1.

R. N. Sachthey, for respondent No. 2.

The Judgment of the Court was delivered by

D **Hidayatullah, J.** The appellant Messrs. Nandram Hunatram of Calcutta, a firm consisting of four partners including one Kishan Lal Aggarwal, held a mining lease for coal in respect of Handidhua Colliery for a period of 30 years commencing on April 6, 1959. Under Part VII of the lease, which contained the covenants of the lessee, the firm had undertaken to commence E mining operations within one year from the date of the execution of the lease and then to continue the work of searching and winning minerals without voluntary intermission in a skilful and workman-like-manner. The firm had appointed one M. L. Goel as the Manager and Kishan Lal Aggarwal as the occupier of the colliery. It appears (and in fact it is not denied) that the partners fell out among themselves and as none of them was willing to F spend money on the colliery, work deteriorated and came to a standstill in May 1962. Goel reported to the State Government that the wages of the labourers had not been paid for weeks, that work had stopped at the colliery and that even the essential services were not being maintained owing to non-payment of wages. He wrote to the firm and Government early in the first week of May, bringing to their notice that the colliery was in danger of G being flooded if the essential services stopped working. On May 9, 1962 the essential services stopped working as their wages had not been paid for several weeks. The colliery began to get flooded when the pumps stopped and it was apprehended that within the next few hours the pumps would be drowned and the colliery lost. Government, however, stepped in and made a promise to the H essential workmen that their wages would be paid and this saved the colliery. On May 14, the Chief Inspector of Mines was informed by Kishan Lal Aggarwal that he was restrained by the other

partners of the firm from making payment for running expenses of the colliery and that he was not in a position to perform his duties as an occupier. He accordingly resigned his office. Goel also resigned and on May 16, 1962 the Subdivisional Officer, Talchar informed Government that the situation had become very alarming and that some action was absolutely necessary. Government thereupon gave a notice on May 19, 1962 asking the firm to remedy the defect within sixty days of the receipt of the notice failing which Government threatened to take over the colliery from the firm. As the firm did nothing to remove the defects and did not request for extension of time, Government took over the colliery and terminated the lease.

The firm thereupon filed an application for revision before the Central Government under Rule 54 of the Mineral Concession Rules 1960. The Central Government asked for the comments of the State Government on the application and invited the firm to make its own comments upon the reply of the State Government. Taking the entire matter into consideration the Central Government by order, February 19, 1963, rejected the application for revision. The present appeal is against the order of the Central Government by special leave of this Court.

It was admitted in the application for revision and it is not denied before us that the partners were quarrelling among themselves and the work at the colliery had therefore stopped. It is admitted that the wages of the labourers were not paid for about five weeks before Government sent its notice on May 19, 1962. It is further admitted that the essential services had also stopped working and that but for the timely action of the Government, the colliery would have been flooded in a matter of hours and probably rendered unworkable till dewatered. With this background in mind we have to consider the objections of the firm to the order of the Central Government in the first instance and of the State Government in the final analysis.

Clause (3) of Part VII of the lease is one of the covenants by the lessee and under it the lessee undertook to continue work, without voluntary intermission, in a skilful and workman-like-manner. Under cls. (i) to (x) of Rule 41 of the Mineral Concession Rules, 1949 and under Rule 27(5) of the Mineral Concession Rules, 1960 power is conferred on the State Government to require the lessee by notice to remove a breach within 60 days of the receipt of notice and in default to determine the lease and forfeit the whole or part of the security in deposit. Under Rule 27(I)(f) the lessee is also required to conduct operations in a proper, skilful and workmanlike-manner. It is abvious that there was a breach by the lessee of the covenants and the Mineral Concession Rules when the firm stopped working the colliery. Even if the firm did not order the stoppage of the work at the colliery it is clear from the complaints

A of Goel and Kishan Lal Aggarwal that no payment was being made to the labourers and they stopped work. On record there are many telegrams and letters sent by the Workers' Association to Government complaining of the failure of the firm to pay their wages for weeks. It is thus clear that action was absolutely necessary to save the colliery from being ruined. It is contended, however, that the B wages were paid in full on the 17th of July but that obviously cannot do away with voluntary intermission which had already taken place for a few weeks. The firm in its representation to the Central Government said that it had plans to raise as much as 240,000 tons of coal per year but their performance shows that in April, 1962 they had raised less than 2,000 tons and nothing in May, June and C July. In these circumstances, there is no merit whatever in the submission of the firm that the action by the State Government was arbitrary and high-handed. It is plain that the firm did not fulfil its obligations under the lease and, whatever the reason, it was guilty of voluntary intermission in the working of the colliery and of endangering it by neglect. This entitled the State Government to step in and determine the lease under the terms of the lease and D the provisions of the Mineral Concession Rules.

It is, however, argued before us that the Central Government did not give a hearing to the firm and also did not give any reasons in its order dismissing the application for revision. Reliance is placed upon two recent decisions of this Court which, following the earlier decision reported in *Harinagar Sugar Mills Ltd.* v. *Shyam Sundar Jhunjhunwala*(1) have laid down that Government should E give reasons when it performs quasi-judicial functions such as hearing appeals and revisions. The two cases are *Madhya Pradesh Industries Ltd.* v. *Union of India and Ors.*(2) and *Aluminium Corporation of India Ltd.* v. *Union of India and Ors.*(3) In *Harinagar Sugar Mills*(1) the order was reversed on the ground that reasons for the decision should have appeared. In the *Aluminium* case there was dispute as to how much scrap was remelted and Government F gave its decision on a report received behind the back of the aggrieved party again without stating why a part of the assessee's case was rejected. In the *Madhya Pradesh Industries* case it was pointed out that an order affirming an earlier decision need not fail because it does not repeat the same reasons over again.

The Mineral Concession Rules make it incumbent on the Central Government to obtain the comments of the State Govern- G ment upon the application for revision and cast a duty on the Central Government to afford an opportunity to the applicant to make representations in respect of the comments of the State Government. This procedure was correctly followed and the Central Government thus had a detailed discussion of the pros and cons of H the case before it. The facts in the case were quite clear and spoke

(1) [1962] 2 S.C.R. 339. (2) [1966] 1 S.C.R. 466.
(3) C.A. No. 635 of 1964 decided on September 23, 1965.

for themselves. The belated attempt to pay the back wages of the workmen did not undo the voluntary intermission for a significantly long period and did not wipe off the dereliction on the part of the firm by which the existence of the colliery was gravely endangered. The documents on the record quite clearly establish that the colliery was being flooded as the essential services had stopped functioning and but for the timely intervention of the State Government the colliery would have been lost. In these circumstances, it is quite clear that the action of the State Government was not only right but proper and this is hardly a case in which any action other than rejecting the application for revision was called for and a detailed order was really not required because after all the Central Government was merely approving of the action taken in the case by the State Government, which stood completely vindicated. The order of the Central Government is clearly sustainable on the material and it is not said that anything has been withheld from us. The action of the State Government far from being arbitrary or capricious was perhaps the only one to take and all that the Central Government has done is to approve of it.

A B C D

The appeal fails and is dismissed with costs.

Appeal dismissed.